John O. Johnson
Tax Counsel
Board of Equalization, Appeals Division
450 N Street, MIC: 85
PO Box 942879
Sacramento CA 95814
Tel: (916) 319-9118
Fax: (916) 324-2618

Attorney for the Appeals Division

**BOARD OF EQUALIZATION**

**STATE OF CALIFORNIA**

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| In the Matter of the Appeal of: | **HEARING SUMMARY** |
| | **PERSONAL INCOME TAX APPEAL** |
| **CECILE R. MIGUEL-RUIZ**[1] | Case No. 414379 |

| Year | Proposed Assessment[2] | Penalty[3] |
|---|---|---|
| 2003 | $10,222.00 | $2,555.50 |

Representing the Parties:

For Appellant: Keith A. Shibou, CPA

For Franchise Tax Board: Judy F. Hirano, Tax Counsel III

QUESTIONS: (1) Whether appellant resided in Indian country during the year at issue so that her reservation-sourced income is not subject to California tax.

(2) Whether appellant's reservation-sourced income is exempt from California tax even if she did not live on reservation land during 2003.

[1] Appellant resides in or near Cathedral City, Riverside County.

[2] Respondent should be prepared to provide the amount of interest accrued as of the hearing date.

[3] This penalty represents a failure to furnish information penalty assessed on the Notice of Action. Respondent has stated during the appeal that it will waive the penalty. (Resp. Reply Br., p. 1, fn. 1.)

HEARING SUMMARY

Background

Procedural Background

Appellant is a member of the Agua Caliente Band of Cahuilla Indians (the Tribe).[4] For all of 2003, appellant lived in a residence on Salem Road, in Cathedral City, California, which exists in "Section 15" of the city.[5] Respondent indicates that appellant purchased the home in 1991 from a limited partnership registered in California. (Resp. Reply Br., p. 2 & exhibits D & E.)[6] In 2003, appellant received $148,514.58 in casino revenue payments from the Tribe. (Resp. Reply Br., exhibit A.) In addition to that income, appellant reported $3,500 in interest from Bank of America and $23 in interest from the Internal Revenue Service (IRS). (Resp. Reply Br., exhibit F, p. 6.)

On appellant's California income tax return, she reported a federal adjusted gross income (AGI) of $152,038, subtracted $152,015 (consisting of the casino revenue payments and the interest from Bank of America), and reported a California AGI of $23. (Resp. Reply Br., exhibit F, p. 1.) Appellant took the $6,140 standard deduction, which exceeded her reported California AGI, leaving her with no reported taxable income and no state income tax due. (*Id.*) Appellant attached a declaration to her return, stating that she lived in Indian country and that her reservation-sourced income was tax exempt. (Resp. Reply Br., exhibit F, p. 9.) Respondent indicates that it subsequently examined appellant's 2003 return and sent letters on April 25, 2006, and August 23, 2006, requesting documents verifying that appellant lived in Indian country. (Resp. Reply Br., p. 2 & exhibit G.)

After receiving no reply, respondent issued a Notice of Proposed Assessment (NPA) on October 24, 2006. The NPA determined that appellant did not live in Indian country, added $152,015.00 to her taxable income, and assessed $10,222.00 in additional tax plus a $2,555.50 penalty

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[4] Respondent notes that the Tribe has also been referred to as the Agua Caliente Band of Mission Indians. (Resp. Reply Br., p. 1 & fn. 3.)

[5] A "Section" is an area of land approximately 1 square mile in size. Neither party disputes that appellant's residence for all of 2003 was within Section 15. (App. Reply Br., p. 5 & exhibit B; Resp. Reply Br., p. 2 & exhibit O.)

[6] Staff notes that respondent has submitted two briefs, both labeled as FTB Reply Briefs. To avoid confusion, the earlier brief, dated October 24, 2007, shall be referred to as respondent's reply brief, and the brief submitted later, on July 27, 2008, shall be referred to as respondent's supplemental brief.

for failure to furnish information and applicable interest. (Resp. Reply Br., exhibit H.) Appellant protested the NPA by letter dated November 28, 2006.[7] (Resp. Reply Br., exhibit B.) Respondent's protest hearing officer responded by letter dated January 9, 2007, stating that the NPA would be affirmed unless appellant provided evidence showing she lived on the Tribe's reservation. (Resp. Reply Br., exhibit I.)

On February 26, 2007, appellant sent respondent a reply, stating that she lived on "fee land" located in Section 15, which she claimed was within the exterior boundaries of the Tribe's reservation. Appellant acknowledged respondent's position that she would have to live on tribal or allotted land to qualify as living on the reservation for purposes of the tax exemption, and therefore stated that providing the requested proof of residence would be futile. (Resp. Reply Br., exhibit B, pp. 4 & 5.) Respondent sent appellant a Notice of Action on March 8, 2007, affirming the NPA based on the finding that appellant did not live on the Tribe's reservation in 2003. (Resp. Reply Br., exhibit J.) This timely appeal followed. (Resp. Reply Br., exhibit K, p. 1.)

History of the Tribe

Congress authorized the President to set aside four tracts of public land in California for Indian reservations in an 1864 act. (10 Stat. 39.) One of the reservation tracts set aside was for the Mission Indians (see *Mattz v. Arnett* (1973) 412 U.S. 481, 493-494), and subsequently its parts were set aside for the individual bands of Mission Indians, of which the Tribe is one (26 Stat. 712; see also *Arenas v. United States* (1944) 322 U.S. 419, 420). President Grant, in an executive order in 1876, set aside Section 14 and parts of Section 22 of township 4 south, range 5 east, San Bernardino meridian for the Agua Caliente Reservation. President Hayes, in an executive order in 1877, added all the even-numbered and unsurveyed portions of the general area around Section 15, except Sections 16 and 36, and any tracts for which title had already passed out of the United States Government's control. The executive branch retained the power to add to or diminish the four reservations as deemed necessary.[8] (See *Donnelly v. United States* (1913) 228 U.S. 243, 255-259; *Mattz, supra*, 412 U.S. at 494, fn. 15.)

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[7] In this protest letter, appellant presented arguments very similar to the contentions she puts forth in this appeal.

[8] Beyond the expansion by President Hayes in 1877, the record does not indicate that the reservation was ever further expanded or diminished, or that it ever included Section 15.

The Agua Caliente reservation was created in a checkerboard fashion, with the odd numbered sections having already been granted to the railroad by the time the reservation was established, and with the reservation consisting of only even numbered sections.[9] (*Arenas, supra*, 322 U.S. at 431; see also *Burke v. Southern Pacific R. Co.* (1914) 234 U.S. 669, 680-682; *United States v. Southern Pacific R. Co.* (1892) 146 U.S. 570, 571-573.) Under the General Allotment Act of 1887, tribal land was allotted to individual members of the Tribe, held in trust by the United States for 25 years or longer, and with limited rights of alienability. (24 Stat. 388.) Through subsequent acts, the allotment policy ended but the lands already allotted were still held in trust by the United States. (See Resp. Reply Br., p. 5, pars. 2-3.) During 2003, appellant owned three parcels of land on the Tribe's reservation held in trust by the United States, but rented these properties and did not use them for significant personal use. (Resp. Reply Br., exhibit F, pp. 7 & 10.)

Applicable Law

State Taxation of Indian Income

California imposes tax on a resident's entire income from all sources. (Rev. & Tax. Code, § 17041, subd. (a).) A California "resident" includes "every individual who is in this state for other than a temporary or transitory purpose." (Rev. & Tax. Code, § 17014, subd. (a)(1).) The United States Supreme Court has stated that:

> State sovereignty does not end at a reservation's border. Though tribes are often referred to as sovereign entities, it was long ago that the Court departed from Chief Justice Marshall's view that the laws of [a State] can have no force within reservation boundaries. Ordinarily, it is now clear, an Indian reservation is considered part of the territory of the State.

(*Nevada v. Hicks* (2001) 533 U.S. 353, 361-362 [internal quotes and cites omitted].) In other words, an individual does not cease to be a California resident merely by living on an Indian reservation that is within California's boundaries. Against this backdrop, California law purports to tax the entire income of any person who resides on an Indian reservation that is within California's borders. It is axiomatic, however, that California cannot confer upon itself the ability to tax income in violation of the U.S.

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[9] The Agua Caliente website provides a brief overview of the Tribe's history. Its timeline states that the odd numbered sections were given to the railroad in the 1860s, and then the reservation was created by President Grant in 1870, when only the even numbered sections were still available. (Resp. Reply Br., exhibit M, p. 4, pars. 2-3; Agua Caliente, *History & Culture* <http://www.aguacaliente.org/HistoryCulture/tabid/57/Default.aspx> [as of March 2, 2009].)

Constitution or federal law.

The United States Congress has plenary and exclusive powers over Indian affairs. (*Washington v. Confederated Bands and Tribes of Yakima Indian Nation* (1979) 439 U.S. 463, 470-471.) Throughout the history of our nation, Congress generally has permitted Indians to govern themselves, free from state interference. (*Warren Trading Post Co. v. Arizona Tax Comm'n* (1965) 380 U.S. 685, 686-687.) States may exercise jurisdiction within Indian reservations only when expressly allowed to do so by Congress. (*McClanahan v. Arizona State Tax Commission* (1973) 411 U.S. 164, 170-171 ["*McClanahan*"].) Looking to the exclusive authority of Congress and traditional Indian sovereignty, the *McClanahan* Court held that a state may not impose personal income tax on an Indian who lives on her own reservation and whose income derives from reservation sources. (*Id.*, at pp. 173-178.) *McClanahan* has became the seminal case in this area; over 25 years ago the Board asserted that the taxation question turns on whether appellant is a "reservation Indian" within the meaning of *McClanahan.* (*Appeal of Edward T. and Pamela A. Arviso*, 82-SBE-108, June 29, 1982.)

The Supreme Court later stated that *McClanahan* created a presumption against state taxing authority which extends beyond the formal boundaries of the reservation, to "Indian country." (*Oklahoma Tax Commission v. Sac & Fox Nation* (1993) 508 U.S. 114.) Congress defined "Indian country" to include reservations, dependent Indian Communities and Indian allotments. (*Id.;* 18 U.S.C. 1151.[10]) It is settled law, however, that a state may tax all the income, including reservation-source income, of an Indian residing within the state and outside of Indian country. (*Oklahoma Tax Commission v. Chickasaw Nation* (1995) 515 U.S. 450; *Appeal of Edward T. and Pamela A. Arviso, supra.*)

In the *Appeal of Samuel L. Flores* (2001-SBE-004), decided on June 21, 2001, the Board addressed the nature of per capita gaming distributions.[11] The Board rejected the argument that an Indian tribe is like a partnership and instead concluded that a tribe is like a corporation. The Board held

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[10] Hereafter, 18 U.S.C. section 1151 will be referred to simply as "section 1151."

[11] Respondent has suggested that the Board need not look to *Flores* in this appeal since that appeal involved an out of state taxpayer and the taxpayer in this instance is a California resident. (Resp. Supp. Br., p. 10.) Respondent's reasoning reaches the same conclusion as *Flores,* with the taxpayer's income being taxable since it was earned in California.

that per capita distributions from a tribe are income from an intangible sourced to the residence of the tribal member. The Board elaborated by saying that if the per capita distributions were received by a tribal member residing in California, but not on the reservation, it is taxable by California.

Indian Country

Section 1151 appears to contain the most comprehensive and frequently cited federal definition of "Indian Country." Section 1151, which is found in the federal criminal code, states:

> [t]he term 'Indian country' … means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Although section 1151 expressly deals with criminal jurisdiction, the Supreme Court has recognized that it also applies to questions of civil jurisdiction. (*De Coteau v. District County Court for Tenth Judicial Dist.* (1975) 420 U.S. 425.) As relevant here, the Court has expressly referenced section 1151 in the context of state income taxation. (*Oklahoma Tax Commission v. Sac & Fox Nation, supra*, 508 U.S. at p. 123.) Under section 1151, "Indian country" includes places such as Indian reservations, dependent Indian communities, and Indian allotments, which in turn have their own definitions and usages.

Section 1151(a) includes in Indian country "all land within the limits of any Indian reservation . . . notwithstanding the issuance of any patent."[12] The term "Indian reservation" in section 1151(a) refers to land that the federal government has expressly set aside for the residence or use of tribal Indians. (*Donnelly v. United States* (1913) 228 U.S. 243, 269; *Cohen's Handbook of Federal Indian Law* (2005) § 3.04(2)(c)(ii).) When called upon to interpret that language, the Supreme Court stated that section 1151 was intended to prevent "an impractical pattern of checkerboard jurisdiction." (See *Seymour v. Superintendent of Washington State Penitentiary* (1962) 368 U.S. 351, 358.) The court decided that criminal jurisdiction was not based on ownership of the land, but whether the land had been set aside by congress as Indian reservation land, notwithstanding any subsequent transfer of ownership as long as congress had not subsequently separated the land from the reservation. (*Id.*)

[12] "Patent" is an outdated term for parcels of land held in fee by Indians and non-Indians within the reservation's limits. (See *Seymour v. Superintendent of Washington State Penitentiary, supra*, at pp. 357-358.)

Once the boundaries of a reservation are established, all tracts therein "remain a part of the reservation until separated therefrom by Congress." (*Seymour v. Superintendent, supra*, at p. 359.) Even granting title of reservation lands to non-Indians "does not, by itself, affect the exterior boundaries of the reservation" and all such lands within the exterior boundaries remain part of Indian country. (*United States ex rel. Condon v. Erickson* (8th Cir. 1973) 478 F.2d 684, 688-689.)

In *Alaska v. Native Village of Venetie Tribal Gov't.* (1998) 522 U.S. 520 ("*Venetie*"), the Supreme Court held that "dependent Indian community," as used in section 1151(b), refers to:

> [a] limited category of Indian lands that are neither reservations nor allotments, and that satisfy two requirements--first, they must have been set aside by the Federal Government for the use of the Indians as Indian land; second, they must be under federal superintendence. (*Venetie*, at p. 527.)

The Court explained its holding by stating:

> [t]he federal set-aside requirement ensures that the land in question is occupied by an 'Indian community'; the federal superintendence requirement guarantees that the Indian community is sufficiently 'dependent' on the Federal Government that the Federal Government and the Indians involved, rather than the States, are to exercise primary jurisdiction over the land in question. (*Id.*, at p. 531.)

While the *Venetie* Court disapproved of a Ninth Circuit six-factor test for determining a "dependent Indian community," the Court expressly stated that some of the Ninth Circuit's factors were still relevant in determining whether the federal set-aside and the federal superintendence requirements are met, including: "the degree of federal ownership of and control over the area, and the extent to which the area was set aside for the use, occupancy, and protection of dependent Indian peoples." (*Id.*, at p. 531, fn 7.)

*Venetie's* federal set-aside requirement calls for more than just tribal ownership or close proximity or importance to a tribe. (*Blunk v. Arizona Dept. of Transportation* (9th Cir. 1999) 177 F.3d 879, 884; 83 Ops.Cal.Att'y.Gen. 190 (1999).) In addition, *Venetie's* superintendence requirement implies some active federal control over the subject land. (*Venetie, supra*, 522 U.S. at p. 533; 83 Ops.Cal.Att'y.Gen. 190 (1999).) Some federal courts examine "the entire Indian community," not just a particular tract of land, to determine whether the *Venetie* set-aside and superintendence requirements are satisfied. (*United States v. Arrieta* (10th Cir. 2006) 436 F.3d 1246, 1250-1251; *HRI, Inc. v. Environmental Protection Agency* (10th Cir. 2000) 198 F.3d 1224, 1248-1249.)

Finally, section 1151(c) includes in Indian country:

> [a]ll Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Allotments" are land that is either owned by individual Indians with restrictions on alienation, or held in trust by the United States for the benefit of individual Indians. (*Yankton Sioux Tribe v. Gaffey* (8th Cir. 1999) 188 F.3d 1010, 1022; *Cohen's Handbook of Federal Indian Law* (2005) § 3.04(2)(c)(iv).)

Federal Preemption

Section 3.5 of article III of the California Constitution states in relevant part:

> An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power . . . (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

In addition, the Board has a long-established policy of declining to consider constitutional issues. In the *Appeal of Aimor Corporation* (83-SBE-221), decided on October 26, 1983, the Board stated:

> This policy is based upon the absence of any specific statutory authority which would allow the Franchise Tax Board to obtain judicial review of a decision in such cases and upon our belief that judicial review should be available for questions of constitutional importance. Since we cannot decide the remaining issues raised by appellant, respondent's action in this matter must be sustained.

This policy was in place long before the enactment of article III, section 3.5. As far back as 1930, the Board stated:

> It is true that we have occasionally asserted that right [to question the constitutionality of a statute]. But this has been only under circumstances wherein such action on our part was necessary in order to protect the revenues of the state and get the problem before the Courts . . . . In the instant case, and in all others like it before us, the taxpayers will have the opportunity of taking the question to the Courts for decision. . . . It might be argued that, if the law is plainly unconstitutional, why should taxpayers be put to that trouble and expense? However, there is diversity of opinion as to the constitutionality of the Act, and it seems to us desirable that this controversy should be settled by the Courts, whose authority to hold acts of the Legislature invalid cannot be questioned.

(*Appeal of Vortox Manufacturing Co.*, 30-SBE-017, Aug. 8, 1930 [internal citations omitted].)

Contentions

Several facts are not in contention in this appeal. Both parties agree that appellant was a member of the Tribe for all of 2003. It is uncontested that appellant's address is located in Section 15 of Cathedral City. The parties agree that $148,515 of appellant's 2003 income was per capita distributions

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derived from the Tribe's casino generated earnings, or reservation-sourced income.[13] (App. Reply Br., p. 1; Resp. Reply Br., exhibit A.)

Appellant contends that her residence is within the exterior boundaries of the Tribe's reservation, and is therefore within Indian country for purposes of section 1151(a). Appellant supports her contention by citing case law and providing a letter from the Bureau of Indian Affairs (BIA) that includes a diagram showing the outermost boundaries of the Tribe's reservation to be a boundary encompassing all of the federally designated tracts as well as any sections, including Section 15, not federally designated as reservation land but being surrounded by reservation land. (App. Reply Br., exhibit C, p. 3.)

Appellant contends that since she is a member of the Tribe, the revenue in question is reservation-sourced, and she resides in Indian country, the per capita distributions are tax exempt. Appellant also contends that California taxation is preempted by the Indian Gaming Regulatory Act (IGRA), when the IGRA is read and interpreted together with the Tribe's state gaming compact. (App. Reply Br., pp. 10-12.) Appellant also asserts that when the laws are ambiguous, the issues should be determined in favor of the Indian community.[14] (App. Reply Br., p. 14.)

Appellant contends that the per capita payments were derived from Class III Gaming Revenues, and therefore are not taxable based on their source, regardless of her status. (App. Reply Br., p. 9.) Appellant presents arguments that equate the Tribe to a partnership. She claims that the pass-through taxation nature of the Tribe means that the revenue is earned by the Tribe, not her, and that she is not required to pay taxes on income that the Tribe would not have to pay taxes on. (*Id*. at pp. 7-10.)

Respondent contends that appellant's reservation-sourced income is taxable in California because she was a California resident and did not live in Indian country. (Resp. Reply Br., pp. 6-11.)

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[13] Appellant initially reported the $3,500 of interest received from Bank of America as deductible or tax exempt on her state income tax return for 2003. (Resp. Reply Br., exhibit F.) However, appellant's briefs in this appeal do not patently further this contention, and focus squarely on the $148,515 amount of reservation-sourced income. Therefore, the interest income will not be discussed.

[14] The Supreme Court has stated when faced with two reasonable interpretations, the choice between them follows a "deeply rooted" principle that "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." (*County of Yakima v. Confederated Tribes & Bands of Yakima Indians* (1992) 502 U.S. 251, 269, citing *Montana v. Blackfeet Tribe of Indians, supra*, 471 U.S. at p. 766, *McClanahan, supra*, 411 U.S. at p. 174.)

Respondent states appellant's interpretation of Indian country under section 1151(a) would convert non-reservation lands into reservation land, but notes that only Congress and the President have the power to create or enlarge reservation land. (Resp. Reply Br., p. 7; See *Donnelly v. United States*, *supra*, 228 U.S. at 255-259.) Respondent concedes that once a land is lawfully set aside by the federal government as part of an Indian reservation, then only Congress can revoke that status. (Resp. Reply Br., p. 8; *Solem v. Bartlett* (1984) 465 U.S. 463, 470.) However, respondent notes that Section 15 was never set aside as Indian reservation land, and contends that the congressional intent in enacting section 1151(a) was not to convert checkerboard reservations into a contiguous reservation.[15] (Resp. Reply Br., pp. 8-11 & exhibit N.)

Respondent states that the language of the BIA letter contradicts the diagram. Respondent notes that the letter states that the "outermost boundaries of the reservation are considered to be the outermost boundary of **those sections included in the above stated Executive Orders**" (emphasis added), and notes that the sections described are the checkerboard tracts (not including the odd numbered sections). Respondent contends that this describes the outermost boundary as being the boundaries around the individual tracts, and not a widespread boundary encompassing reservation and non-reservation tracts. (Resp. Reply Br., p. 6.) Respondent also notes that the BIA letter does not indicate that it is referring to subsection (a), and that the legislative intent and cited case law do not support appellant's interpretation of section 1151(a). (*Id*.) Respondent also asserts that appellant has not provided sufficient evidence to show that her residence qualifies as being in Indian country under section 1151(b) or (c). (Resp. Supp. Br., p. 5.)

Respondent contends that taxation is not preempted by the IGRA and, in any event, the Board is precluded from reaching the federal preemption question. (Resp. Reply Br., pp. 11 & 12.) Respondent contends that the Tribe is not like a partnership, and, rather, appellant is liable for tax on the per capita income because she lived on non-reservation land in California. (Resp. Supp. Br., pp. 10-12.) Respondent has stated on appeal that it will waive the penalty associated with this appeal. (Resp. Reply Br., p. 1, fn. 1.)

[15] Respondent notes that appellant references the dissenting opinion in *De Coteau* to argue against the checkerboard jurisdiction. Respondent asserts that a dissenting opinion is not binding law. (Resp. Reply Br., p. 2.)

STAFF COMMENTS

It appears to staff that the question of whether Section 15 is "Indian country" for purposes of determining whether the state is preempted from taxing appellant's income pursuant to R&TC section 17041 may be a federal preemption question. The issue of whether a state statute is preempted by federal law is a constitutional issue. (U.S. Const., art. VI, cl. 2.) The California Constitution prohibits this Board from refusing to enforce a statute on the basis that it is preempted by federal law, unless an appellate court has already made such a determination, and this Board has a long-established policy of declining to consider such issues. (Cal. Const., art. III, § 3.5; *Appeal of Aimor Corporation, supra*.) The parties cite Title 18, United States Code section 1151, and federal case law interpreting the federal statute, in support of their arguments with respect to whether Section 15 is Indian country. The parties should be prepared to discuss whether an appellate court decision prohibits the enforcement of R&TC section 17041 under the circumstances present in this appeal such that the Board could refuse to enforce that statute by granting this appeal. The parties should also discuss whether there is any decision or other authority that has permitted a state agency to refuse to enforce a state statute on the basis of an appellate court decision that did not expressly address the state statute in question. Should the Board determine that no appellate court decision prohibits the enforcement of R&TC section 17041, the Board must sustain the FTB's action. Appellant could then pay the tax and file a refund suit so that the courts could decide the issue.

However, should the Board determine that there is an appellate court decision prohibiting the enforcement of R&TC section 17041 under the circumstances present in this appeal, then the Board may determine whether appellant lived in Indian Country. In that event, staff notes that it does not appear as though Section 15 is currently, or ever was, part of the tracts of land specifically set aside for the Agua Caliente Reservation.[16] Appellant should be prepared to provide any evidence showing that Section 15 was ever part of the tracts of land designated as the Tribe's reservation or the larger Mission Reservation. The parties should be prepared to discuss the correct interpretation of section 1151(a), and whether appellant's residence, which apparently was never specifically designated by the federal

[16] The Tribe's website, as of the March 5, 2009, contains a map that shows Section 15 as being "Off Reservation," or non-reservation land. (See Resp. exhibit P.)

government as Indian country, can be labeled as being in Indian country for purposes of California income tax. In particular, the parties should be prepared to discuss the meaning of "all land within the limits of any Indian reservation," and whether this should be interpreted broadly to include tracts of land never set aside by the federal government as Indian reservation land strictly due to their being surrounded by Indian reservation land, as appellant suggests.

The parties should be prepared to clarify the status of the $3,500 in Bank of America interest. Appellant appears to only provide arguments as to the $148,515 of reservation-sourced income, while the appealed assessment is based on $152,015 of additional income which includes the Bank of America interest. Appellant should be prepared to clarify if they still contend that the Bank of America interest is deductible or tax exempt, and support any such claim.

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